

(3) The RJA may request that the attorney representing the injured party include the amount asserted by the United States as part of special damages. The injured party's attorney may not represent the United States nor may the United States pay attorney fees as this would be in violation of 5 U.S.C. 3106. Where indicated, this arrangement should be reduced to writing. Be mindful that the attorney's duty to the injured party is in conflict with the interests of the United States where the amount potentially recoverable is small in comparison to the amount asserted by the United States. In this event the RJA should pursue recovery independently.

(b) Careful monitoring of all assertions is required to insure timely follow-up resulting in collection or suit where indicated. Installation of a suspense system to avoid the expiration of the statute of limitations is essential. Recommendations to file suit should be forwarded by the RJA well prior to the expiration of the statute of limitations. Within six months prior to the running of the statute of limitations, USARCS must be notified of the status of the claim or potential claim. Follow-up demands should precede filing suit to create a written record of efforts to avoid suit. Personal contact with all parties is encouraged. When represented, contact the representative.

(c) Sources other than vehicle liability coverage should be exhausted in cases where the amount of the potential recovery exceeds \$50,000 and the coverage is small. Coordination with USARCS is required. USARCS can obtain expert witnesses for medical malpractice cases, product liability cases, or other cases in which another tortfeasor may be involved.

§ 537.11 Litigation.

(a) If a tortfeasor or insurer refuses to settle, or if an injured party's attorney improperly withholds funds, the RJA or recovery attorney must consider litigation to protect the interests of the United States. Litigation is particularly appropriate if a particular insurer consistently refuses to settle claims, or if the government's interests

are not adequately represented on a claim over \$25,000.

(b) RJAs or recovery attorneys must maintain close contact with local U.S. Attorney's Offices to ensure these offices are willing to initiate litigation on cases.

(c) In order to directly initiate or intervene in litigation, an RJA or recovery attorney must prepare a litigation report and formally refer the case through the Affirmative Claims Branch, USARCS, and the Litigation Division, OTJAG (as required by AR 27-40, chapter 5), to the U.S. Attorney. While the RJA or recovery attorney, in conjunction with the Litigation Division Torts Branch, should attempt to have the U.S. Attorney's Office initiate litigation at least six months before the expiration of the statute of limitations (SOL), the RJA or recovery attorney may contact USARCS telephonically if SOL problems necessitate quick action on a case. The RJA or recovery attorney should also contact USARCS if a U.S. Attorney is reluctant to pursue an important case. An injured party's attorney may represent the government's interest in litigation without any special coordination.

§ 537.12 Settlement authority.

(a) *Assertions for \$50,000 or less—(1) Approval authority.* An RJA or civilian recovery attorney, if delegated authority by his or her ACO or CPO, may compromise a collection on a claim asserted for \$50,000 or less, unless recovery action is reserved by a command claims service.

(2) *Final action authority.* (i) An ACO, or CPO if delegated authority by its ACO, may terminate collection action on a claim asserted for \$50,000 or less, unless action is reserved by a command claims service.

(ii) The foregoing authorities may waive a claim asserted for \$50,000 or less where undue hardship exists.

(iii) Determination of amount. The amount of \$50,000 is determined totaling the amounts for medical care, lost military wages, lost earnings or government property damage arising from the same claims incident.

(b) *Assertions over \$50,000.* USARCS retains final authority over assertions over \$50,000. By use of the mirror file

system and through a dialogue between USARCS and the field during the course of the assertion, USARCS will decide whether it or the RJA or civilian recovery attorney will conduct the negotiations. To help it decide, the RJA or civilian recovery attorney will forward a memorandum for either medical or property recovery approval, in the format of the samples posted at the USARCS Web site (for the address see the Note to § 537.1). USARCS may waive the requirement to submit a memorandum.

(c) *Appeals*—(1) *Assertion for \$50,000 or less.* Where the assertion is made by an RJA or civilian recovery attorney, the appeal will be determined by the SJA, the medical center judge advocate, or head of the ACO or CPO. Otherwise, the appeal will be determined by the Commander USARCS.

(2) *Assertion over \$50,000.* Where the assertion is made by a Claims Judge Advocate or claims attorney, the appeal will be determined by the Commander USARCS.

(d) *Compromise or waiver.* Any assertion may be compromised, waived or terminated in whole or in part, if for example:

(1) The cost to collect does not justify the cost of enforcement.

(2) There is evidence of fraud or misrepresentation.

(3) The U.S. cannot locate the tortfeasor.

(4) Legal merit has not been substantiated.

(5) The statute of limitations has run and the debtor refuses to pay.

(6) Collection of all or part of the amount of funds demanded would create inequity. The following criteria apply:

(i) Detailed information on what funds are available for recovery.

(ii) Reasonable value of the injured party's claim for permanent injury, pain and suffering, decreased earning power, and any other special damages.

(iii) Military, Department of Veterans Affairs, Social Security disability, and any other government benefits accruing to the injured party.

(iv) Probability and amount of future medical expenses of the government and the injured party.

(v) Present and prospective assets, income, and obligations of the injured party and those dependent on him or her.

(vi) The financial condition of the debtor.

(vii) The degree and nature of contributory negligence on the part of the injured party in causing his injury or death.

(viii) The percentage of attorney's fees that his attorney is willing to reduce.

(ix) The willingness of the tortfeasor to enter into an installment agreement.

(e) *Releases.* The RJA or recovery attorney may execute a release for affirmative claims in the pre-litigation stage acknowledging that the government has received payment in full of the amount asserted or the compromised amount agreed upon, or the final installment payment. The format of the release should be similar to the sample posted at the USARCS Web site (for the address see the Note to § 537.1). However, the RJA or recovery attorney may not execute either an indemnity agreement or a release which prejudices the government's right to recover on other claims arising out of the same incident without the approval of USARCS. In addition, the RJA or recovery attorney may not execute a release that purports to release any claim that the injured party may have other than for medical care furnished or to be furnished by the United States. The RJA or recovery attorney will not execute a release if the government's claim is waived or terminated.

§ 537.13 Enforcement of assertions.

Meritorious assertions that do not result in collections should be enforced as follows:

(a) Where the debtor is a business or corporation otherwise financially capable the RJA or equivalent should forward a recommendation to bring suit or intervene in an existing suit regardless of the amount of the debt. As authorized by 28 U.S.C. 3011, the demand amount in the complaint shall include an additional 10% of the original claimed amount, to cover the administrative costs of processing and handling the enforcement of the debt.